

Central Intelligence Agency



Washington, D. C. 20505

12 June 1984

STAT

NOTE FOR:

Enclosed for your inclusion in the
record is the letter on H.R. 4620 that we
sent to the Chairman of House Post and
Civil Service Committee.

STAT

Office of Legislative Liaison

STAT

to: Department
of the Treasury
room: Office of
the Secretary
Office of the Assistant
General Counsel
(Administration &
Legislation)
date: _____

*Brandon Blum asks
that we send you
a copy of these reports*

AS
Arthur J. Schissel
Chief, Legislation Section
room 1414
phone 566-8523



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

JUN - 1 1984

Dear Mr. Chairman:

The Department of Treasury wishes to submit its views on H.R. 4620, the "Federal Telecommunications Privacy Act of 1984". In general the bill prohibits Federal officers and employees from causing or permitting the recording of or listening in on conversations conducted on the Federal or other telecommunications systems, with some exceptions. The Department strongly opposes H.R. 4620 because we do not think that legislation is needed in this area and, even if a need did exist, we doubt that this bill can be amended to remedy our significant reservations.

Our initial concerns relate to the scope of the restrictions, which do not differentiate between recording and listening in where effected through a mechanical or electronic instrumentality, on the one hand, and through stenographic recording or listening in where a speaker phone is used, on the other. The bill makes the latter type of recording or eavesdropping criminally punishable. We believe this is harsh and beyond the scope of activity which legislation should limit. In addition, H.R. 4620 gives the GSA new authority over matters peculiar to each agency's mission and expertise which would be better left to the agency.

Section 113(g) provides fine and imprisonment sanctions for violations of the bill. There are no corresponding provisions for civil penalties even though the preceding subsections require GSA to take steps to obtain agency compliance. Thus, while there appear to be administrative duties required, there are no procedures for ensuring administrative compliance with those duties, and the criminal penalties theoretically encompass any failure of compliance under the bill.

Further, there is no requirement that a person have knowingly violated the bill's provisions for the criminal penalties to be imposed. For example, if an agency employee failed to document or improperly documented a telecommunications device which permitted another agency employee to monitor a conversation, both employees could be charged with

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violations. However, the official who failed to document the device might be administratively sanctioned, and the employee who actually monitored could be subject to criminal penalties, even if he were unaware of the first employee's administrative failure and believed his conversation to be legal.

Similarly, a secretary who walked into an office where a speaker phone conversation was underway, and inadvertently overheard a conversation, might be subject to criminal prosecution. While an extreme example, this highlights our problems with the bill's poorly drafted criminal sanctions which have no requirement that action have been taken knowingly, nor that the illegal listening in have damaged the government or any individual.

Section 113(c)(1) (relating to monitoring with the consent of one party) establishes conditions on law enforcement monitoring which rely on "Attorney General guidelines for the administration of the Omnibus Control and Safe Streets Act of 1968". First, there are no Attorney General guidelines for the administration of that Act, raising the question of whether the law enforcement exception is operative at all. Second, the Attorney General's procedures for telephone monitoring require agency heads to adopt rules for their agencies, but do not promulgate government-wide rules. In addition, as presently worded, the law enforcement exemption contained in this section may be read so as to preclude adequate coverage of all necessary law enforcement activities, some of which are not directed towards criminal activity.

Section 113(c)(5) of the bill excepts from the general prohibition, monitoring with the consent of one party for public safety needs. The section would, however, require such monitoring to be documented by written determination of the agency head or his designee citing the particular need and identifying the segment of the public needing protection and citing examples of the danger. These requirements may actually delay or hinder public safety measures already in place under strict safeguards in this agency.

The exemption in Section 113(c)(7) of the bill for service monitoring would also cause problems. The bill does not make clear whether this exemption includes monitoring for purposes other than ensuring the proper functioning of telephone equipment. The Treasury would prefer a specific exemption for monitoring to evaluate employee telephone performance and to identify other personnel-related problems. Such monitoring should also be controlled by the

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Treasury, which is familiar with its particular agency needs and procedures.


Under 113(d), monitoring and listening in would be permitted with the consent of all parties. However, this monitoring would be controlled by GSA, removing agency discretion even in the most routine administrative situations, such as speaker phones, telephone conference calls and the like.

Finally, because the Internal Revenue Service has its own serious concerns with the bill, I am enclosing their separate comments, which have been endorsed by the Commissioner of Internal Revenue, Roscoe Egger.

In sum, while the Treasury recognizes Congress' concerns with potential abuse of telecommunication systems, we believe these concerns are not properly addressed by this legislation. We believe that potential abuses can be more effectively addressed administratively by individual agencies, rather than by government-wide legislation.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your committee.

Sincerely,



John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

The Honorable
William Ford, Chairman
Committee of Post Office
and Civil Service
House of Representatives
Washington, D.C. 20515

Enclosure

Internal Revenue Service Comments

Federal Telecommunication Privacy Act of 1984

Enactment of H.R. 4620, Federal Telecommunications Privacy Act of 1984, would endanger valuable practices and procedures that have already been designed to protect taxpayers. In particular, the bill raises the following specific problems:

Law Enforcement Purposes Exception

New proposed section 113(c)(1) fails to provide an adequate law enforcement exception. The bill's exception for law enforcement purposes reads as follows:

"The recording or listening in is performed for law enforcement purposes in accordance with procedures established by the agency head, as required by the Attorney General's guidelines for the administration of the Omnibus Crime Control and Safe Streets Act of 1968, and in accordance with procedures established by the Attorney General."

Despite the statute's reference to the requirements of the 1968 Act, the Justice Department contends that nothing in the Act specifically requires or authorizes the Attorney General to establish guidelines or procedures for one-party consensual monitoring. Currently, there are no such procedures and as a result the bill may not provide a currently operative law enforcement exception.

In addition, there is the definitional question of what is a "law enforcement purpose". Law enforcement purposes may not include civil enforcement proceedings. Consequently, the sophisticated collection programs which involve recording taxpayer commitments would be prohibited.

This problem is not limited to the Service. Due to the experience that the IRS has in being a creditor, a large number of Federal agencies look to us for expertise in

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collection matters. The Service is constantly upgrading practices to provide efficient collection of delinquent accounts. As we move toward the most sophisticated collection techniques in the coming "paperless age", we have found that recording taxpayer commitments to pay delinquent accounts has been an effective tool. Other agencies have expressed interest in our collection programs.

Also, we believe that there is a definitional problem with the word "recording". The legislation might prohibit stenographic recording or even note taking -- such a construction would lead to absurd results. For example, we could take a telephone complaint from a taxpayer but could not write down his name.

Service Monitoring Exception

In proposed Section 113(c)(7) the bill would provide an exception if:

"The recording or listening in is performed by any Federal agency for service monitoring but only after analysis of alternatives and a determination by the agency head or the agency head's designee that monitoring is required to effectively perform the agency mission. Strict controls shall be established and adhered to for this type of monitoring."

Even if this exception permitted monitoring similar to that now done in Taxpayer Service and Collection, which is not at all clear, the bill provides a set of controls and hurdles in Section 113(e) that significantly complicate administration of the program. An inadvertent failure could jeopardize the whole program.

Disclosure Problems

In new Section 113(f), the proposed legislation would provide GSA with access to monitored information. Since this information may be "return information" under Section 6103 of the Internal Revenue Code, such access should not be permitted.

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Conclusion

The enactment of H.R. 4620 would prohibit the use of monitoring for civil enforcement proceedings. The bill's exception for law enforcement proceedings is insufficiently defined. While there is an exception for taxpayer service-type monitoring, that exception is complex and unwieldy. The statute also poses problems with section 6103 of the Internal Revenue Code concerning disclosure of returns and return information. In sum, the statute would endanger valuable practices and procedures that have already been designed to protect taxpayers.



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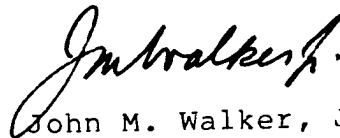
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